

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No 03-109

COMMENTS OF THE RECENTLY CONVERTED PRICE CAP CARRIERS

The undersigned, on behalf of their respective operating telephone companies (collectively, the “Recently Converted Price Cap Carriers”),¹ hereby respond to Section VI.G of the Commission’s recent Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in the above-captioned proceedings (the “NPRM”).² The Recently Converted Price Cap Carriers all serve high-cost areas and receive interstate common line support (“ICLS”) on a frozen per-line basis as a result of their recent conversion from rate-of-return regulation to price cap regulation at the federal level.

¹ The seven Recently Converted Price Cap Carriers are: Alaska Communications Systems, CenturyLink, Consolidated Communications, FairPoint Communications, Inc., Puerto Rico Telephone Company, Virgin Islands Telephone Corporation, and Windstream Communications. These carriers constitute all but one of the carriers receiving ICLS on a frozen per-line basis, and they receive the vast majority of such support. Frontier, the only other carrier receiving ICLS on a frozen per-line basis, receives less than \$1 million per year in frozen per-line ICLS support.

² FCC 11-13, rel. Feb. 9, 2011, 76 Fed. Reg. 11632 (March 2, 2011).

I. BACKGROUND & SUMMARY

All of the Recently Converted Price Cap Carriers serve high-cost areas, and their receipt of frozen ICLS is critical to their continued ability to meet the telecommunications and broadband needs of their customers. Due to the deficiencies of other high-cost mechanisms (such as insufficient targeting of support to highest-cost areas),³ ICLS is an especially important source of federal high-cost support for these carriers, representing between 25 percent and 100 percent of the total federal high-cost support provided to each carrier. This support enables preservation of affordable rates and maintenance and expansion of the carriers' networks.

ICLS was established in 2001 when the FCC ordered rate-of-return carriers to substantially reduce their interstate switched access charges by phasing out carrier common line charges.⁴ Rate-of-return carriers were permitted to recover a portion of the interstate component of their common line or loop-related costs through ICLS in instances where those carriers could not otherwise recover their full interstate common line revenue requirement, given subscriber line charges ("SLCs") were (and remain) capped under the Commission's rules.⁵ Thus, ICLS is designed to enable rate-of-return carriers that cannot recover their entire interstate common line revenue requirement from

³ NPRM para. 372.

⁴ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket Nos. 96-45, 98-77, 98-166, 00-256, Second Report and Order and Further Notice of Proposed Rulemaking Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19617 (2001).

⁵ See, e.g., NPRM para. 20, fig. 2, and para. 169.

capped SLCs to maintain their interstate access and end-user charges at reasonable levels.⁶

Over the past two decades the Commission has encouraged carriers to move to incentive-based regulation. Yet until recently, no clear path existed for carriers to move from rate-of-return regulation to price cap regulation. Between 2008 and 2010, eight companies independently petitioned the FCC for waiver of certain rules to convert some or all of their respective operating subsidiaries from rate-of-return to price cap regulation at the interstate level.⁷ In particular, the petitioning carriers persuasively demonstrated that they required continued support from the ICLS mechanism to maintain expected

⁶ *Id.* para. 169.

⁷ *Petition of Virgin Islands Telephone Corporation for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules; Petition of China Telephone Company, FairPoint Vermont, Inc., Maine Telephone Company, Northland Telephone Company of Maine, Inc., Sidney Telephone Company, and Standish Telephone Company Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; and Windstream Petition for Limited Relief*, WC Docket Nos. 10-39, 10-47 & 10-55, Order, 25 FCC Rcd 4824 (Wireline Comp. 2010) (“VITELCO Voluntary Price Cap Order”); *ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc. and ACS of the Northland, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, Order, WC Docket No. 08-220, Order, 24 FCC Rcd 4664 (Wireline Comp. Bur. 2009); *CenturyTel, Inc., Petition for Conversion to Price Cap Regulation and Limited Waiver Relief*, WC Docket No. 08-191, Order, 24 FCC Rcd 4677 (Wireline Comp. Bur. 2009); *Petition of Puerto Rico Telephone Company, Inc. for Election of Price Cap Regulation and Limited Waiver of Pricing and Universal Service Rules; Consolidated Communications Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief; Frontier Petition for Limited Waiver Relief upon Conversion of Global Valley Networks, Inc., to Price Cap Regulation*, WC Docket Nos. 07-292, 07-291, 08-18, Order, 23 FCC Rcd 7353 (Wireline Comp. Bur. 2008); *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294 (2008) (the “Windstream Voluntary Price Cap Order”)(collectively, the “Voluntary Price Cap Orders”).

investment levels, especially since they were submitting to capped rates and agreeing to other price reductions.⁸

In granting the requested waivers, the Commission permitted each of the Recently Converted Price Cap Carriers to continue receiving ICLS for each converted study area, frozen on a per-line basis at the time of their respective price cap election, and subject to a total cap on ICLS for each study area. The Commission found that this regime would facilitate lower interstate access rates, for the benefit of wholesale competition and retail customers alike. The Commission also recognized that this arrangement would encourage the new price cap carriers to operate more efficiently and respond more effectively to competition.⁹

In the NPRM, the Commission proposes several rule changes to “rationalize” rate-of-return carriers’ high-cost support, including ICLS, but does not propose to phase out ICLS in the near term.¹⁰ The Commission does not propose to make any changes to ICLS for recently converted price cap carriers at this time.¹¹ Nevertheless, the Commission seeks comment on Verizon’s suggestion that frozen ICLS be phased down on the same schedule as interstate access support (“IAS”),¹² in the coming “few years.”¹³

⁸ Since the Interstate Access Support (“IAS”) mechanism for price cap carriers was a capped fund, there was no obvious path for ICLS to be converted to IAS for carriers opting into price caps after IAS went into effect. *See, e.g., VITELCO Voluntary Price Cap Order* para. 19 (“the Commission tentatively has concluded that carriers converting from rate-of-return regulation to price cap regulation are ineligible for IAS established in the *CALLS Order*”).

⁹ *See, e.g., Windstream Voluntary Price Cap Order* para. 8.

¹⁰ NPRM para. 162 *et seq.*

¹¹ *Id.* para. 393. Consistent with this statement in the NPRM, the order in this proceeding should expressly state that any rule changes affecting ICLS will not apply to the Recently Converted Price Cap Carriers, whose ICLS funding will continue to be governed by the terms of the *Voluntary Price Cap Orders*.

¹² *Id.* para. 393.

The Recently Converted Price Cap Carriers submit that any near-term reduction of their ICLS would undermine their ability to maintain their existing broadband and voice services, as well as expand their broadband offerings. Moreover, near-term reductions to the Recently Converted Price Cap Carriers' ICLS would effectively penalize these carriers for voluntarily adopting incentive-based regulation. This Commission action would discourage other service providers from voluntarily electing price cap regulation in the future, and disserve the public interest. Thus, acting on Verizon's suggestion would undermine the Commission's long-term goals for reform.

II. DISCUSSION

A. Recently Converted Price Cap Carriers Require ICLS To Meet Their Universal Service Obligations And Keep Their Rates Affordable

In agreeing to freeze ICLS on a per-line basis, the Commission recognized that this support mechanism allows the Recently Converted Price Cap Carriers to meet their universal service obligations, and maintain their interstate access rates at reasonable levels.¹⁴ Verizon has not offered any evidence that the Recently Converted Price Cap Carriers' need for this universal service support has diminished. In fact, this support has been integral to the carriers' deployment and maintenance of existing broadband and voice facilities, and the need for this support is only reinforced by the Commission's clearly articulated desire that all carriers *increase* their investment in public

¹³ NPRM para. 228. While the NPRM frames this proposal in terms of "transitioning" IAS to the Connect America Fund ("CAF"), it is far from clear whether the FCC envisions that any current recipients of IAS would receive CAF as a substitute – rather, the NPRM notes that "current IAS recipients would be *eligible to compete* for CAF support..." *Id.* para. 233 (emphasis added).

¹⁴ See, e.g., *Windstream Voluntary Price Cap Order* para. 20.

telecommunications infrastructure to bring broadband capability to unserved communities.¹⁵

As the Commission recognizes, high-cost support currently is not uniformly distributed in a way that maximizes overall consumer benefits.¹⁶ Creating a “rural-rural divide,”¹⁷ federal support levels for some rural rate-of-return carriers are high and increasing, while support levels for mid-sized price cap carriers serving rural and insular areas are declining significantly.¹⁸ Indeed, the Recently Converted Price Cap Carriers’ election of incentive-based regulation ensured that these carriers’ reliance on interstate switched access charges and federal support would decrease. Further reductions in their ICLS would only worsen the unwarranted disparity in support awarded to different carriers serving high-cost areas.

Section 254 requires that support be “specific, predictable and sufficient” for provision of the supported services in high-cost areas.¹⁹ Phasing down or eliminating Recently Converted Price Cap Carriers’ ICLS without any replacement would jeopardize their ability to provide voice and broadband services to their customers in high-cost areas, contrary to the requirements of section 254 and the reform goals that the Commission

¹⁵ *E.g.*, NPRM para. 10 (describing plan to make affordable broadband available to all Americans and accelerate the transition from circuit-switched to packet-switched, Internet protocol (“IP”)-based networks, with voice running over them as an application).

¹⁶ *Id.* para. 162. The Commission acknowledges that carriers in many rural areas “receive insufficient support for broadband,” NPRM para. 6.

¹⁷ *Id.*

¹⁸ *Id.* para. 165-66 (noting that rate-of-return carriers receive an average of \$29.04 per line per month, compared to \$7.11 for price-cap converts, and high-cost support for rate-of-return carriers has grown 12.6 percent since 2006, while support for price-cap converts has shrunk 20.9 percent over the same period).

¹⁹ 47 U.S.C. §254(b)(5).

seeks to achieve.²⁰ Such an outcome would be inconsistent with the Commission's recognition that "universal service policies should not inadvertently create barriers to the provision of universal service."²¹ Unwarranted reductions in ICLS also would undercut the ability of the Recently Converted Price Cap Carriers to invest in new broadband infrastructure in unserved and underserved areas.

B. Revoking Frozen Per-Line ICLS At This Juncture Would Penalize the Recently Converted Price Cap Carriers and Discourage Other Carriers From Adopting Incentive-Based Regulation

In addition to being an unreasonable proposal from a universal service perspective, Verizon's recommendation to reduce or eliminate the Recently Converted Price Cap Carriers' ICLS would undermine the Commission's goal of promoting incentive-based regulation. First, it would unfairly penalize the Recently Converted Price Cap Carriers by abandoning the trade-off embodied in the Voluntary Price Cap Orders adopted in the last three years. Second, it would discourage other carriers from electing incentive-based regulation and justify their fear of the reform process.

Based on the balance of equities in the elective price cap conversion proceedings, the Commission granted the requests of the Recently Converted Price Cap Carriers to convert to price cap regulation in exchange for receiving ICLS frozen on a per-line basis. The basic bargain was that ICLS would be provided at a predictable level, though the Recently Converted Price Cap Carriers understood that the total support would diminish

²⁰ 47 U.S.C. § 254(b) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services ..."); NPRM para 10.

²¹ NPRM para. 52 and n. 42 (*citing Rural Task Force Order*, 16 FCC Rcd 11244, 11322 (2001)).

over time with the inevitable decline in access lines.²² The carriers also agreed to make substantial reductions to their switched access rates and to forego other charges or increases to which they otherwise would be entitled under price cap regulation.²³ The Recently Converted Price Cap Carriers accepted these terms, as well as the prospect that their interstate switched access rates would be capped and in many cases lowered, as a reasonable trade-off for the improved pricing flexibility and incentives to increase efficiency that would come with federal price cap regulation. The Commission agreed to these terms because of its preference for incentive-based regulation.²⁴

The Voluntary Price Cap Orders are consistent with Commission precedent recognizing “a number of benefits with incentive regulation,” including encouraging carriers to operate efficiently.²⁵ The Commission, however, would discourage other carriers from electing incentive-based regulation if it lowered or eliminated frozen per-line ICLS so soon after these elections were made. Doing so effectively would penalize the carriers that elected incentive-based regulation, and heighten the resistance of the remaining rate-of-return carriers to adopting incentive-based regulation.

²² *E.g., Windstream Voluntary Price Cap Order* para. 10 (“granting the requested relief will directly lower some access rates over time and will likely reduce the universal service support that Windstream receives in the future”).

²³ *E.g., id.* para. 16 (requiring that Windstream reduce its switched ATS rate to the \$0.0065 target level through the use of a 6.5 percent productivity factor beginning with its 2008 annual access tariff filing); *id.* para. 20 (noting that Windstream agreed to forego any PICC or CCL charges that otherwise might be assessable under the price cap rules, and also would forego an increase in the non-primary line residential CLC cap from \$6.50 to \$7.00).

²⁴ *See Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6790, ¶ 29 (1990) (“*LEC Price Cap Order*”) (subsequent history omitted) (“[I]ncentive regulation is superior to rate of return . . .”).

²⁵ *See NPRM* para. 598-99 (recognizing that “there are a number of benefits with incentive regulation” and aiming to “adopt a recovery framework that provides incentives for carriers to operate efficiently”).

C. No Justification Has Been Given For Phase-Out of Frozen ICLS Support

Reduction or elimination of frozen ICLS cannot be justified by any specific concerns about price cap rates or ICLS. First, the NPRM's questions raised about price cap rates do not apply to the Recently Converted Price Cap Carriers. The Commission remarks that carriers "serving nearly all price cap access lines have had no reductions to their price cap indices, productivity-related or otherwise, since 2002, and some price cap carriers have had no reductions in ten years."²⁶ Unlike the carriers described in this passage, however, each of the Recently Converted Price Cap Carriers has been *lowering* ATS rates annually since converting to price caps, and rates for some of these carriers are expected to continue declining for several more years to come.

Likewise, the Commission's concerns about uncapped ICLS for rate-of-return carriers do not pertain to price cap carriers.²⁷ For the Recently Converted Price Cap Carriers, ICLS amounts *are* capped, and frozen on a per-line basis. Thus, the total amount of support for these carriers has been declining with line loss over the past several years. Total support to any of these carriers cannot increase unless the carrier's total line count reverses current trends and increases – a phenomenon that none of the Recently Converted Price Cap Carriers has experienced since adopting price caps and freezing ICLS on a per-line basis. Moreover, total ICLS is capped on a study area basis, so regardless of any hypothetical line growth, no study area will ever be eligible to

²⁶ NPRM n. 375 (discussing the average traffic-sensitive ("ATS") rates of price cap carriers, which declined as far as the target rates largely by 2002, well before any of the Recently Converted Price Cap Carriers adopted price caps for their interstate rates).

²⁷ NPRM para. 209.

receive more than it did at the time it converted to price cap regulation. According to USAC data, in January 2010, 99 study areas received a total of \$18.4 million in frozen ICLS (just under \$186,000 per study area), and in June 2011, 105 study areas received a total of \$17.6 million per month in frozen ICLS (less than \$168,000 per study area).

Under these circumstances, there is no valid basis for any further reductions to the Recently Converted Price Cap Carriers' ICLS at this time. While the Commission was clear that the relief granted in the Voluntary Price Cap Orders would be “subject to Commission modification in its access charge or universal service reform proceedings,”²⁸ adopting the approach advocated by Verizon would create new, significant problems – threatening universal service and undermining the Commission's goal of promoting incentive-based regulation – while failing to address the key concerns raised in the NPRM.

III. CONCLUSION

For the foregoing reasons, until the Connect America Fund is fully implemented and incorporates all necessary high-cost support, the Commission should allow frozen per-line ICLS to remain in effect for carriers that voluntarily adopted price cap regulation for their interstate access charges between 2008 and 2010. Frozen ICLS should remain frozen under the terms of the Voluntary Price Cap Orders, regardless of the actions the Commission ultimately takes with respect to ICLS for rate-of-return carriers or IAS for price cap carriers.

²⁸ See, e.g., *Windstream Voluntary Price Cap Order* para. 20.

Respectfully submitted,

<p>Leonard A. Steinberg ALASKA COMMUNICATIONS SYSTEMS 600 Telephone Avenue, MS #65 Anchorage, AK 99503-6091 Leonard.Steinberg@acsalaska.com 907-297-3105</p> <p>Michael Shultz CONSOLIDATED COMMUNICATIONS 350 S. Loop 336 W Conroe, TX 77304 Michael.Shultz@consolidated.com 936-788-7414</p> <p>Walter Arroyo PUERTO RICO TELEPHONE COMPANY, INC. P.O. Box 360998 San Juan, Puerto Rico 00936-0998 warroyo@claropr.com 787-792-9510</p> <p>Andrew D. Lipman Russell M. Blau BINGHAM McCUTCHEN LLP 2020 K Street, N.W. Washington, DC 20006 andrew.lipman@bingham.com russell.blau@bingham.com 202-373-6033/6035 <i>Counsel for Virgin Islands Telephone Corporation</i></p> <p>April 18, 2011</p>	<p>Jeffrey S. Lanning CENTURYLINK, INC. 1099 New York Avenue, NW Suite 250 Washington, DC 20001 Jeffrey.S.Lanning@CenturyLink.com 202-429-3113</p> <p>Michael T. Skrivan FAIRPOINT COMMUNICATIONS 1 Davis Farm Road Portland, ME 04103 mskrivan@fairpoint.com 207-535-4150</p> <p>Jennie B. Chandra WINDSTREAM COMMUNICATIONS 1101 17th Street, NW, Suite 802 Washington, DC 20036 jennie.b.chandra@windstream.com 202-223-7667</p> <p>Karen Brinkmann KAREN BRINKMANN PLLC 555 Eleventh Street, NW Suite 1010 Washington, DC 20004-1304 KB@KarenBrinkmann.com 202-365-0325 <i>Counsel for ACS, CenturyLink, and FairPoint</i></p>
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